IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 246 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

PUSHPA ENTERPRISES

Appearance:

1. INCOME TAX REFERENCE No. 246 of 1985

MR BB NAYAK FOR MR MANISH R BHATT for Applicant.

MR MANISH KAZI FOR MR SN SOPARKAR for Respondent.

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 25/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the revenue, the following question has been referred to this Court for its opinion under the provisions of section 256(1) of the Income Tax Act,1961 by the Income Tax Appellate Tribunal, Ahmedabad Bench "B".

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amount of subsidy received in the Year could not be treated as part of the cost of the fixed assets met by the Government and therefore the assessee would be entitled to benefits of depreciation, additional depreciation and investment allowance on the cost of these without deduction of the subsidy amounts received?"

2. We have heard learned Advocate Mr.B.B.Nayak appearing for the revenue and learned Advocate Mr.Manish Kazi for the respondent. The question which has been referred to this Court has been squarely answered by the Hon'ble Supreme Court in the case of C.I.T. Vs. P.J.Chemicals Ltd., 210 I.T.R.830. Looking to the law laid down by the Hon'ble Supreme Court in the said case, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

3. The Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt